

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.C.1.

Agenda Item Summary: The Department requests the Board initiate rulemaking to amend the air quality incorporation by reference (IBR) rules to adopt the current editions of federal regulations and state rules. Amendments to update citations, correct numbering, eliminate unnecessary statutory language in definitions, and other rule amendments are also included in this rulemaking.

List of Affected Rules: This rulemaking would amend ARM 17.8.101, 102, 103, 106, 110, 302, 401, 402, 801, 802, 818, 819, 821, 901, 902, 905, 1002, 1201, 1202, 1204, 1206, 1212, 1213, 1214, 1220, 1224, 1226, and 1232.

Affected Parties Summary: The proposed rule amendments could affect all parties regulated by the Department under the air quality rules.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendments to ARM 17.8.101, 102, 103, 106, 110, 302, 401, 402, 801, 802, 818, 819, 821, 901, 902, 905, 1002, 1201, 1202, 1204, 1206, 1212, 1213, 1214, 1220, 1224, 1226, and 1232, and take testimony on inclusion of the rule amendments into the State Implementation Plan (SIP).

Background: Annually, the Department requests the Board update the rules that incorporate by reference state administrative rules and federal regulations. The IBR updating is accomplished by amending the dates in ARM 17.8.102. An attachment addresses the major changes in federal regulations that will be adopted as a result of this action. The failure to adopt the most recent edition of the Code of Federal Regulations may result in the loss of primacy for the air program.

Other proposed amendments that make no substantive changes in the rules are included in this rulemaking. These include updating and correcting citations, revising IBR statements so wording will be consistent throughout, and referring to statutory definitions whenever they exist rather than repeating statutory language.

Hearing Information: The Department recommends the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the SIP. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP. These amendments would be submitted to EPA as a SIP revision.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment; and
2. List of major changes to the Code of Federal Regulations (CFR) since July 1, 2001.

Board of Environmental Review Attachment to Executive Summary

This attachment lists the major changes to the CFR sections that are incorporated by reference in the air program rules, and were published in the Federal Register between July 1, 2001 and June 30, 2002. These changes are included in the July 1, 2002, CFR edition that is being incorporated by reference in this rulemaking.

CFR Sections Affected: 40 CFR 63.600-631

General Explanation: EPA promulgated amendments to the NESHAP for phosphoric acid manufacturing plants and the NESHAP for phosphate fertilizers production plants which were promulgated on June 10, 1999 under authority of section 112 of the Clean Air Act (CAA). The NESHAP apply to owners and operators of phosphoric acid and phosphate fertilizers production facilities that are major sources of hazardous air pollutants (HAP). The EPA is amending specific provisions in the NESHAP to resolve issues and questions raised after promulgation of the final rules. The amendments do not significantly change EPA's original projections for the environmental benefits, compliance costs, and burden on industry, and do not affect the number of affected facilities.

CFR Sections Affected: 40 CFR 63.863-865

General Explanation: EPA promulgated amendments to the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. These amendments are technical corrections that will not change the standards established by the rule or the level of health protection it provides.

CFR Sections Affected: 40 CFR 63.1200-1213 (Subpart EEE)

General Explanation: EPA promulgated amendments to the NESHAP for hazardous waste-burning cement kilns, lightweight aggregate kilns, and incinerators. These amendments do not change the numerical emission standards, but rather focus on improvements to the implementation of the emission standards, primarily in the areas of compliance, testing and monitoring. EPA also extended the compliance date for sources to September 30, 2003.

CFR Sections Affected: 40 CFR 63.1340-1359 (Subpart LLL)

General Explanation: EPA promulgated amendments to the NESHAP for the portland cement manufacturing industry. The amendments make improvements to the implementation of the emission standards, primarily in the areas of applicability, testing, and monitoring.

CFR Sections Affected: 40 CFR 63.1500-1520 (Subpart RRR)

General Explanation: EPA promulgated amendments to the NESHAP for secondary aluminum production to clarify compliance dates and defer certain early compliance obligations. These noncontroversial amendments were a result of settlement agreements with industry trade associations.

CFR Sections Affected: 40 CFR 63.1560 through 1579 (Subpart UUU)

General Explanation: EPA promulgated NESHAP for certain types of affected sources at

petroleum refineries. These sources include catalytic cracking units (CCU), catalytic reforming units, and sulfur recovery units, as well as associated by-pass lines. The EPA has identified petroleum refineries as major sources of hazardous air pollutants (HAP). Hazardous air pollutants that would be reduced by this final rule include organics (acetaldehyde, benzene, formaldehyde, hexane, phenol, toluene, and xylene); reduced sulfur compounds (carbonyl sulfide, carbon disulfide); inorganics (hydrogen chloride, chlorine); and particulate metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, and nickel). These NESHAP will require petroleum refineries that are major sources to meet standards reflecting the application of the maximum achievable control technology (MACT). When fully implemented, this rule will reduce HAP emissions from the affected sources by nearly 11,000 tons per year tpy--an 87 percent reduction from current levels. Emissions of other pollutants such as volatile organic compounds (VOC), particulate matter (PM), carbon monoxide (CO), and hydrogen sulfide will be reduced by about 60,000 tpy.

CFR Sections Affected: 40 CFR 72.2 and 75.1 through 74 and App. A

General Explanation: EPA promulgated amendments to the requirements for sources affected by the Acid Rain Program and by the NOX Budget Trading Program. The amendments streamline the rule by eliminating outdated sections and making technical corrections and clarifications. They provide additional flexibility and options for sources in meeting the continuous emission monitoring system (CEMS) requirements under programs to reduce sulfur dioxide and nitrogen oxides emissions. These revisions may apply to sources that monitor and report emissions only during the ozone season, as well as to sources that monitor and report emissions for the entire year. The revisions benefit the environment by ensuring that sulfur dioxide (SO₂), nitrogen oxides (NOX), and carbon dioxide (CO₂) emissions are accurately monitored and reported, even as they benefit the affected industrial sources by creating opportunities to adopt cost-saving procedures.